

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEAN MARC VAN DEN HEUVEL,

Plaintiff,

v.

KETAN AJUDIA, M.D.,

Defendant.

No. 2:24-cv-00169-TLN-CKD PS

FINDINGS AND RECOMMENDATIONS TO
DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION;
ORDER

Plaintiff, who is proceeding without counsel in this action, requests leave to proceed in forma pauperis (“IFP”).¹ (ECF No. 2.) See 28 U.S.C. § 1915 (authorizing the commencement of an action “without prepayment of fees or security” by a person who is unable to pay such fees). However, because the undersigned finds that the court lacks subject matter jurisdiction over this action, the undersigned recommends that the action be dismissed without prejudice, and that plaintiff’s application to proceed in forma pauperis in this court be denied as moot. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (noting the federal court’s independent duty to ensure it has subject matter jurisdiction in the case).

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¹ Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72. Resolution of dispositive matters by a magistrate judge are to be filed as findings and recommendations. See Local Rule 304.

Legal Standards

Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & fn. 7 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996). The court must dismiss a case if, at any time, it determines that it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). A federal district court generally has jurisdiction over a civil action when: (1) a federal question is presented in an action “arising under the Constitution, laws, or treaties of the United States” or (2) there is complete diversity of citizenship and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a). Further, a plaintiff must have standing to assert a claim, which requires an injury in fact caused by defendant(s) that may be redressed in court. Harrison v. Kernan, 971 F.3d 1069, 1073 (9th Cir. 2020).

Federal courts lack subject matter jurisdiction to consider claims that are “so insubstantial, implausible, foreclosed by prior decisions of this court, or otherwise completely devoid of merit as not to involve a federal controversy.” Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998); see also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018) (noting that the “wholly insubstantial and frivolous” standard for dismissing claims operates under Rule 12(b)(1) for lack of federal question jurisdiction). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A court may dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Id. at 327; Rule 12(h)(3).

Analysis

Plaintiff has neither alleged a specific cause of action over which the court has original jurisdiction nor provided any facts from which the court can infer a cause of action over which the court has original jurisdiction. The court does not have federal question jurisdiction over this

1 action, as plaintiff does not assert any federal claims against any defendant. There is no diversity
2 of citizenship jurisdiction because both plaintiff and defendants are citizens of California. See
3 McDaniel v. Hinch, No. 2:17-cv 02448-KJM-CKD (E.D. Cal. July 11, 2018) (“[W]ith no stated
4 claim triggering either diversity or federal question jurisdiction, the complaint is properly subject
5 to dismissal for lack of jurisdiction”).

6 Accordingly, the court recommends that the action be dismissed without prejudice for lack
7 of federal subject matter jurisdiction.

8 **RECOMMENDATIONS**

9 Accordingly, IT IS HEREBY RECOMMENDED that:


- 10 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) be DENIED AS MOOT;
11 2. The action be DISMISSED for lack of subject matter jurisdiction; and
12 3. The Clerk of Court be directed to CLOSE this case.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
15 days after being served with these findings and recommendations, plaintiff may file written
16 objections with the court. Such a document should be captioned “Objections to Magistrate
17 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
18 the specified time may waive the right to appeal the District Court’s order. Turner v. Duncan, 158
19 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

20 **ORDER**

21 All pleading, discovery, and motion practice in this action are STAYED and all future
22 hearing dates VACATED pending resolution of these findings and recommendations. Other than
23 objections to the findings and recommendations or non-frivolous motions for emergency relief,
24 the court will not entertain or respond to any pleadings or motions until the findings and
25 recommendations are resolved.

26 Dated: March 20, 2024

27 
CAROLYN K. DELANEY
28 UNITED STATES MAGISTRATE JUDGE

vand.0169